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ABSTRACT

This paper examines the two conflicting definitions of local control inherent in the majority and minority opinions in the 1973 U.S. Supreme Court decision, San Antonio Independent School District v. Rodriguez. The author agrees with the minority decision that lack of adequate funds, regardless of the number of legal constraints set down by the state, weakens, if not effectively eliminates, local decision-making and control. What research there is on the relationship between school funding and school district autonomy indicates (contrary to the assumption of the Court's majority) that increased state funding to local districts does not decrease local decision-making power. However, property-poor districts that receive insufficient state equalization funds are restricted in ways in which richer districts are not. Not only does local control suffer in poor districts, but the quality of education (at least in part dependent on money) also drops. (DS)

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LOCAL CONTROL OF SCHOOLS: TWO VIEWS OF ITS NATURE
AS FOUND IN THE RODRIQUEZ DECISION RENDERED BY
THE UNITED STATES SUPREME COURT

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Local Control of Schools: Two Views of its Nature
as Found in the Rodriguez Decision Rendered by
the United States Supreme Court

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Abstract

This paper will examine the 1973 United States Supreme Court Decision - San Antonio School District v. Rodriguez for the purpose of extracting two different and conflicting views of the nature of local control of schools. These two views (in a sense definitions) will be examined in light of contemporary research and professional judgement to see which, if either, is most realistic, given the various and sundry organizational constraints operating on all local government decision-making in contemporary times.

Local Control of Schools: Two Views of its Nature
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the United States Supreme Court

In the 1973 decision--San Antonio School District v. Rodriguez--the United States Supreme Court dealt with the matter of local control as an integral part of the mosaic of issues related to the examination of the structure and functioning of the Texas system of financing public schools.¹ Among the questions of education (schooling) as a fundamental right and cost/quality arguments, the majority decision and minority dissents each in turn reflected at length upon whether or not the system of funding schools under consideration by the Court was necessary to maintain and ensure local control of the schools. As argued by the State of Texas and accepted by the majority (a 5-4 decision) of the Court, local control of schools was the "compelling state interest" for the system of funding used by the state. The dissenters also found that local control was a "legitimate state purpose", but rejected the notion that the Texas system of funding adequately ensured local control for all school districts in the state. In fact, it may be safely

1. See the partially annotated bibliography at the end of this paper for basic source material dealing with both the Rodriguez case and Serrano case. The Serrano case was the forebearer of the Rodriguez and many other like cases still in various state court systems.

pointed out that those who dissented found the system of funding irrational to the purpose of local control in that it favored property rich districts and disfavored property poor ones.

Hence the point of disjuncture between the majority view and minority dissents on the issue of local control revolves about the quantity of money available to school districts. Two factors, in a sense, intersect to translate quantity of money into "quality of local control" often referred to in the case as local decision making. These two factors are 1) the Minimum Foundation School Program which provides, on a moderately sliding scale, a guaranteed minimum of funding for each district considering student population and local district effort in raising money through property tax, and 2) the various functions allowed or conferred by the state on the local school district. Translated, this means essentially those areas over which the board of education in each district exercises final decision making.

Put somewhat differently since both the majority opinion and minority dissents assumed the merit of local control, the arguments centered about the funds available to each district for implementing decisions made at the local level and the distribution of functions as set forth in the Texas Education Code, that is, those powers reserved to the state and those granted to local districts by statute.

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Using the Texas Education Code Justice Powell writing for the majority and Justice Marshall, writing the most detailed of the three dissenting opinions, found in turn that genuine local control did exist or that it was a pretense.

It would be well to cite both Justices' exact words (footnotes included) to aid in the analysis that follows. First Justice Marshall who referred to the whole matter as a "mere sham."

...it is apparent that the State's purported concern with local control is offered primarily as an excuse rather than as a justification for inter-district (monetary) inequality.

In Texas, statewide laws regulate in fact the most minute details of local public education. For example, the State prescribes required courses.⁸⁸ All textbooks must be submitted for state approval,⁸⁹ and only approved textbooks may be used.⁹⁰ The State established the qualifications necessary for teaching in Texas public schools and the procedures for obtaining certification.⁹¹ The State has even legislated on the length of the school day.⁹² Texas' own courts have said:

"As a result of the acts of the Legislature our school system is not of mere local concern but it is statewide. While a school district is local in territorial limits, it is an integral part of the vast school system which is coextensive with the confines of the State of Texas." Treadaway v. Whitney Independent School District, 205 S. W. 2d 97, 99 Tex. Ct. Civ. App. 1947).

See also El Dorado Independent School District v. Tisdale, 3 S. W. 2d 420, 422 (Tex. Comm'n App. 1928).

⁸⁸Tex. Educ. Code Ann. §§21.101-21.117. Criminal penalties are provided for failure to teach certain required courses. Id., §§4.15-4.16.

⁸⁹Id., §§12.11-12.35.

⁹⁰Id., §12.62.

⁹¹Id., §§13.031-13.046.

⁹²Id., §21.004.²

Justice Powell responded in a lengthy footnote. After a review of the argument set forth by Justice Marshall cited above, Justice Powell stated:

....This assertion, that genuine local control does not exist in Texas, simply cannot be supported. It is abundantly refuted by the elaborate statutory division of responsibilities set out in the Texas Education Code. Although policy decisionmaking and supervision in certain areas are reserved to the State, the day-to-day authority over the "management and control" of all public elementary and secondary schools is squarely placed on the local school boards. Tex. Educ. Code Ann. §§17.01, 23.26 (1972). Among the innumerable specific powers of the local school authorities are the following: the power of eminent domain to acquire land for the construction of school facilities, id., §§17.26, 23.26; the power to hire and terminate teachers and other personnel, id., §§13.101-13.103; the power to designate conditions of teacher employment and to establish certain standards of educational policy, id., §13.901; the power to maintain order and discipline, id., §21.305, including the prerogative to suspend students for disciplinary reasons, id., §21.301; the power to decide whether to offer a kindergarten program, id., §§21.131-21.135, or a vocational training program, id., §21.111, or a program of special education for the handicapped, id., §11.16; the power to control the assignment and transfer of students, id., §§21.074-21.080; and the power to operate and maintain a school bus program, id., §16.52. See also Pervis v. LaMarque Ind. School Dist., 328 F. Supp. 638, 642-643 (SD Tex. 1971), reversed, 468 F. 2d 1054 (CA5 1972); Nichols

2. San Antonio Independent School District v. Rodriguez, 411 U.S., pp. 126-127 (1972).

v. Aldine Ind. School Dist., 356 S. W. 2d 182 (Tex. Civ. App. 1962). Local school boards also determine attendance zones, location of new schools, closing of old ones, school attendance hours (within limits), grading and promotion policies subject to general guidelines, recreational and athletic policies, and a myriad of other matters in the routine of school administration. It cannot be seriously doubted that in Texas education remains largely a local function, and that the preponderating bulk of all decisions affecting the schools is made and executed at the local level, guaranteeing the greatest participation by those most directly concerned.³

In addition to the specifics mentioned above by both Justices Marshall and Powell, other powers were mentioned by one or both of them. Specifically, the local district could indebt itself for capital improvement but within limitations set by state statute; minimum salaries were set by the state for all teachers, but districts are granted the right to exceed these limits. In addition, the State of Texas mandates compulsory attendance and the scheme for funding education through the Texas Minimum Foundation Program. Clearly, the same set of state laws were being utilized by both sides in this particular matter to support their separate contentions.

A careful reading of the evidence that both the majority and minority opinions offers in the legal aspect of local control--powers confirmed, shared or denied to the local district by the state--suggests no exacting guide as to how to define the presence or absence of local control. The best one can abstract is that the state grants to local

3. Ibid., pp. 51-52, fn. 108.

authority some functions and powers. There is no suggestion, except possibly by implication for making a judgement, as to which functions or powers are of greater importance or of a more critical nature. The only conclusion that appears valid on the basis of an examination of the Justices remarks is that each of them found a sufficient number of functions or powers granted or denied (or circumscribed) to warrant their separate and quite opposite opinions about the "quality" of local control. Justice Marshall's contention (for the minority) that it was a pretense (a sham) suggests that, in his judgement, local control existed on paper, that is, in the statutes of the State of Texas, but, in reality, nowhere else. Justice Powell's citation (for the majority) of a selective number of functions and powers implies that those cited were sufficient evidence that local districts have a fair amount of discretion or latitude in decision making. Hence, for Justice Powell and those who concurred with him, local control was alive and reasonably healthy in Texas.

The second aspect of the opposing views over local control had to do with variation of money available to each of the school districts in the state. For those in the dissent from the majority opinion, their view was influenced by the variation in funding levels among the districts of the state as conditioned by state law. Of the three dissenting opinions (Marshall, White and Brennan),

Justice White presents the most cogent argument. Homing his statement in on the demonstrable and substantial dollar inequalities among school districts in Texas, he levels his judicial broadside at the lack of "meaningful options" and "realistic choice." Simply, in his view, the system of funding schools in Texas did not permit such options and choices either practically or legally. That is, the system was so structured by statute that poor districts cannot within the limits imposed by the state, raise revenue that comes anywhere close to what property rich districts can raise, even when the more wealthy districts make less fiscal effort than the poor districts. In the process of his discussion, Justice White states fairly the basic contentions of the State of Texas about local control. (This is the same set of contentions accepted by the majority.) Then, in the judgement of this writer, Justice White demolishes those contentions with facts accepted by all parties concerned. What follows is the text of Justice White's analysis (footnotes included).

The Texas public schools are financed through a combination of state funding, local property tax revenue, and some federal funds.¹ Concededly, the system yields wide disparity in per-pupil revenue among the various districts. In a typical year, for example, the Alamo Heights district had total revenues of \$594 per pupil, while the Edgewood district had only \$356 per pupil.² The majority and the State concede, as they must, the existence of major disparities in spendable funds. But the State contends that the disparities do not invidiously discriminate against children and families

in districts such as Edgewood, because the Texas scheme is designed "to provide an adequate education for all, with local autonomy to go beyond that as individual school districts desire and are able.... It leaves to the people of each district the choice whether to go beyond the minimum and, if so, by how much."³ The majority advances this rationalization: "While assuring a basic education for every child in the State, it permits and encourages a large measure of participation in and control of each district's schools at the local level."

I cannot disagree with the proposition that local control and local decisionmaking play an important part in our democratic system of government. Cf. James v. Valtierra, 402 U.S. 137 (1971). Much may be left to local option, and this case would be quite different if it were true that the Texas system, while insuring minimum educational expenditures in every district through state funding, extended a meaningful option to all local districts to increase their per-pupil expenditures and so to improve their children's education to the extent that increased funding would achieve that goal. The system would then arguably provide a rational and sensible method of achieving the stated aim of preserving an area for local initiative and decision.

The difficulty with the Texas system, however, is that it provides a meaningful option to Alamo Heights and like schools districts but almost none to Edgewood and those other districts with a low per-pupil real estate tax base. In these latter districts, no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the real estate property tax. In these districts, the Texas system utterly fails to extend a realistic choice to parents because the property tax, which is the only revenue-raising mechanism extended to school districts, is practically and legally unavailable. That this is the situation may be readily demonstrated.

Local school districts in Texas raise their portion of the Foundation School Program--the Local Fund Assignment--by levying ad valorem taxes on the property located within their boundaries. In addition, the districts are authorized, by the state constitution and by statute, to levy ad valorem

property taxes in order to raise revenues to support educational spending over and above the expenditure of Foundation School Program funds.

Both the Edgewood and Alamo Heights districts are located in Bexar County, Texas. Student enrollment in Alamo Heights is 5,432, in Edgewood 22,862. The per-pupil market value of the taxable property in Alamo Heights is \$49,078, in Edgewood \$5,960. In a typical, relevant year, Alamo Heights had a maintenance tax rate of \$1.20 and a debt service (bond) tax rate of 20¢ per \$100 assessed evaluation, while Edgewood had a maintenance rate of 52¢ and a bond rate of 67¢. These rates, when applied to the respective tax bases, yielded Alamo Heights \$1,433,473 in maintenance dollars and \$236,074 in bond dollars, and Edgewood \$223,034 in maintenance dollars and \$279,023 in bond dollars. As is readily apparent, because of the variance in tax bases between the districts, results, in terms of revenues, do not correlate with effort, in terms of tax rate. Thus, Alamo Heights, with a tax base approximately twice the size of Edgewood's base, realized approximately six times as many maintenance dollars as Edgewood by using a tax rate only approximately two and one-half times larger. Similarly, Alamo Heights realized slightly fewer bond dollars by using a bond tax rate less than one-third of that used by Edgewood.

Nor is Edgewood's revenue-raising potential only deficient when compared with Alamo Heights. North East District has taxable property with a per-pupil market value of approximately \$31,000, but total taxable property approximately four and one-half times that of Edgewood. Applying a maintenance rate of \$1, North East yielded \$2,818,148. Thus, because of its superior tax base, North East was able to apply a tax rate slightly less than twice that applied by Edgewood and yield more than 10 times the maintenance dollars. Similarly, North East, with a bond rate of 45¢, yielded \$1,249,159--more than four times Edgewood's yield with two-thirds the rate.

Plainly, were Alamo Heights or North East to apply the Edgewood tax rate to its tax base, it would yield far greater revenues than Edgewood is able to yield applying those same rates to its base. Conversely, were Edgewood to apply the Alamo Heights or North East rates to its base, the yield

would be far smaller than the Alamo Heights or North East yields. The disparity is, therefore, currently operative and its impact on Edgewood is undeniably serious. It is evident from statistics in the record that show that, applying an equalized tax rate of 35¢ per \$100 assessed valuation, Alamo Heights was able to provide approximately \$330 per pupil in local revenues over and above the Local Fund Assignment. In Edgewood, on the other hand, with an equalized tax rate of \$1.05 per \$100 of assessed valuation, \$26 per pupil was raised beyond the Local Fund Assignment.⁴ As previously noted, in Alamo Heights, total per-pupil revenues from local, state, and federal funds was \$594 per pupil, in Edgewood \$356.⁵

In order to equal the highest yield in any other Bexar County district, Alamo Heights would be required to tax at the rate of 68¢ per \$100 of assessed valuation. Edgewood would be required to tax at the prohibitive rate of \$5.75 per \$100. But state law places a \$1.50 per \$100 ceiling on the maintenance tax rate, a limit that would surely be reached long before Edgewood attained an equal yield. Edgewood is thus precluded in law, as well as in fact, from achieving a yield even close to that of some other districts.

¹The heart of the Texas system is embodied in an intricate series of statutory provisions which make up Chapter 16 of the Texas Education Code, Tex. Educ. Code Ann. §16.01 et seq. See also Tex. Educ. Code Ann. §15.01 et seq., and §20.10 et seq.

²The figures discussed are from Plaintiffs' Exhibits 7, 8, and 12. The figures are from the 1967-1968 school year. Because the various exhibits relied upon different attendance totals, the per-pupil results do not precisely correspond to the gross figures quoted. The disparity between districts, rather than the actual figures, is the important factor.

³Brief for Appellants 11-13, 35.

⁴Variable assessment practices are also revealed in this record. Appellants do not, however, contend that this factor accounts, even to a small extent, for the interdistrict disparities.

⁵The per-pupil funds received from state, federal, and other sources, while not precisely equal, do not account for the large differential and are not directly attacked in the present case.⁴

The majority opinion was based partly on a review of the Texas Minimum Foundation Program. The review led to the conclusion that the program assured an adequate education for each child in the state. Nowhere does the majority or the State of Texas dispute the facts cited above by Justice White; only the implications of those facts for the larger constitutional issue of discrimination based on wealth.⁵

Justice Marshall, in his own dissenting opinion, after an analysis of evidence with reference to the funding scheme in Texas, decided that for many districts local control was a myth.⁶ In the Serrano case, the forebearer of the Rodriguez and other such cases, the California State Supreme Court declared that fiscal freewill for poor districts was a "cruel illusion."⁷

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We have reviewed the major components as dealt with by the court related to local control--the powers and/or functions granted or denied local school districts and the question of the amount of expendable wealth available to implement decisions at the local level. Some additional

4. Ibid., pp. 63-67.

5. Ibid., pp. 18-29.

6. Ibid., pp. 129.

7. Serrano v. Priest, 487 P. 2d p. 1260 (1971).

First, in the case of dollars available or functions conferred, it must be kept in mind that we are dealing in a relative area. There is no model that indicates total local control within the legal framework of American society. Even historical examples may be distortions of reality.⁸

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8. See: Bernard Bailyn, Education in the Forming of American Society: Needs and Opportunities for Study (Chapel Hill: The University of North Carolina Press, 1960) for an interpretive history of the origin of schooling.

Campbell and others⁹ make the traditional point that school districts, like all local government, are a creation of the state and their limits are set by statute. They also suggest that the concept of local control is a part of the fabric of our value system and by implication the degree of local autonomy varies from state to state based on history and tradition. But because of the growing involvement at the federal as well as state level in local affairs (financially and through statute), local control is in their view as much a folklore as a fact. There is, in addition, the very complex network of an informal nature, that impacts and constrains local decision making. It is this last point that Wirt and Kirst¹⁰ deal with at length. These points are examined throughout Rosenthal.¹¹

But while these sources set the context of the larger question--best summed up by the question, "Who runs the schools?"¹²--they offer little in the way of an operational definition that might resolve the dispute over the issue raised in the Rodriguez case.

9. Roald F. Campbell and others, The Organization and Control of American Schools (3d ed.; Columbus, Ohio: Charles E. Merrill Publishing Co., 1975), pp. 76-77

10. Frederick M. Wirt and Michael W. Kirst, The Political Web of American Schools (Boston: Little, Brown & Co., 1972), see esp. chap. 5.

11. Alan Rosenthal, ed., Governing Education: A Reader on Politics, Power and Public School Policy (Garden City, N.Y.: Doubleday & Co., 1969).

12. Ibid., p. vii.

A search of the ERIC system revealed little of a direct aid to the problem. Four entries do deserve note, however, because they deal with a related point raised in the majority decision.

One writer¹³, after reviewing the factors that limit local control (school district autonomy is the search definition) which included intergovernmental aid, professionalization (and unionization), court decisions and state statute (and various administrative restrictions), suggests that all existing evidence does not indicate that increased state financial support of local districts means loss of school district decision making. It does not follow that as the state changes its structure of funding, and raises its share to local school districts, state control over educational matters increases.

Another study¹⁴ looking at ten states with different levels of state aid and examining eleven components of state control over local decision making. e.g., personnel and budgetary matters, reached basically the same conclusion as Ruhrman, that is, there is no relationship between degree of state control and level of state contribution to local districts. Further, the Levin study found little relationship

13. Susan H. Ruhrman, "Local Control: Fear or Fantasy, A Report of the New Jersey Education Reform Project" (ERIC # ED095653, April 1974). See also by the same author: "Local Control: Fear or Fantasy?" New Jersey School Leader, July/August 1974, pp. 7-10.

14. Betsy Levin and Michael A. Cohen, Levels of State Aid Related to State Restrictions on Local School District Decision-Making (Washington D.C.: The Urban Institute, 1973). Also listed in ERIC - # ED077105.

between degree of state control on these same components and the rate at which innovations were adopted. But the study did find a positive relationship between higher levels of state contribution to local school districts and a higher rate of innovation.

Leading to the conclusion that full state funding and some greater degree of equity in the availability of educational funds for all local districts may not decrease local control/decision making does not follow, however. The best that one can suggest is to accept the point raised by Charles Benson.¹⁵ In discussing the many variables that need attention in a scheme that includes full state funding (including a more equitable distribution of money among all districts of the state), he concludes that more information is needed than is now available. It may be said that we are still data poor in the area of designing fair funding schemes.

But setting aside the question of a single kind of funding scheme that is best (if such exists), the matter of whether or not higher contributions by the state to local school districts decreases local decision making is a moot point. What evidence there is does not suggest that it does. Yet, in the majority decision, Justice Powell accepted the notion

15. Charles S. Benson, "Equity in School Financing: Full State Funding," (ERIC # ED103984, 1975).

that control follows more in arguing against challenging the Texas scheme of funding.¹⁶

Summary

Two items are left: 1) extracting the two definitions of local control implicit in the Rodriguez case and 2) rendering a judgement as to which definition is most realistic, given the various and sundry institutional and organizational constraints operating on local school districts in contemporary times. It should be evident at this point that on the basis of the data available, no exact operational definition can be stated.

For the majority of the High Court, it appears that a minimum amount of funding per student set at approximately \$350 and the powers and functions set by state statute was sufficient to ensure adequate local decision making. On the basis of weak data, the majority concluded that any substantial increase of state support would decrease local decision making (and one must assume this) by increasing legal restrictions on local districts by the state.

For the minority, the legal restrictions already in existence along with the variation in funding, structured by law, were sufficient to conclude that property poor school districts had little or no real decision making power.

16. Rodriguez, op. cit. pp. 49, fn. 109.

How, for example, could such districts compete meaningfully with relatively wealthy districts for the most competent teachers (a generally assumed criterion for quality of education) in the state. While all districts had the power to hire teachers, which districts, it may be asked, are likely to obtain the most highly qualified, if wealthy districts are able to offer higher salaries. Given the criteria that the profession and lay public alike accept as indicators of quality education (e.g. teachers salaries, student/teacher ratio, physical facilities and other like input variables), the minority had a powerful argument to sustain its view.

So at this juncture in the evaluation of research on the question and the logical arguments that can be made on the fact of our knowledge base, insufficient though it may be, it must be concluded by this writer that the minority contentions related to local decision making come closest to reality. Lack of adequate funds regardless of the few or many legal constraints set down by the legislature weakens, if not effectively eliminates, local decision making. If numerous legal constraints are added to insufficient funds, then the matter of local control may well be relegated to the category of a growing number of myths in American society.

Bibliography

(Partial and Annotated)

In addition to the citations found in the footnotes of this paper, there are five sources by the author that, taken together, give a general background to the Serrano and Rodriguez case. The titles are indicative of the subject matter.

Maltby, Gregory P. and others, ed. Restructuring School Finance: Legal and Financial Implications of the Serrano Case for the State of Oregon. Corvallis, Oregon: Continuing Education Publications, 1973. There are two articles in particular that make reference to local control in the context of the Constitutional issues and fiscal reform. See: John E. Coons, "An Appraisal on Serrano" and Charles S. Benson, "Serrano and State Legislatures."

Maltby, Gregory P. "Post-Rodriguez--What Now for School Finance?" Education: New Mexico, III (June, 1973), 1-5.

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_____. "Rodriguez: The Fundamentality of Education," Education: New Mexico, V (Summer, 1975), 16-37.

An ERIC search was made under the definition: School District Autonomy + Educational Finance/Finance Reform. There were thirty-five (35) entries, out of which those cited in the paper were found useful. Time span of the search - 1972-1976.